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Permanent Forum on Indigenous Issues Fourteenth session

New York, 20 April-1 May 2015

Item 5 of the provisional agenda*

**Half-day discussion on the expert group meeting
on the theme "Dialogue on an optional protocol
to the United Nations Declaration on the Rights
of Indigenous Peoples"**

Expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples"

Note by the Secretariat

The expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples" was held in New York on 28 and 29 January 2015. The secretariat of the Permanent Forum transmits herewith the report of the meeting.

* E/C.19/2015/1.



Report of the expert group meeting on the theme “Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples”

I. Introduction

1. At its thirteenth session, held from 12 to 23 May 2014, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize a three-day international expert group meeting on the theme “Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples”, based on the study prepared by the Permanent Forum on that topic (see E/C.19/2014/7). At its 46th plenary meeting, on 16 July 2014, the Council decided to authorize an international expert group meeting on the theme “Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples” (see Council decision 2014/243), with the participation of members of the Permanent Forum, representatives of indigenous experts, interested Member States, the United Nations system and other interested intergovernmental organizations. It also requested that the results of the meeting be reported to the Permanent Forum at its fourteenth session. The expert group meeting was organized by the secretariat of the Permanent Forum. The programme of work is attached as annex I.

II. Organization of work

A. Attendance

2. The following members of the Permanent Forum attended the expert group meeting:

Dalee Sambo Dorough, Chair

Joan Carling

Megan Davis

Oliver Loode

Aisa Mukabenova

3. The following experts from United Nations mechanisms relevant to the rights of indigenous peoples attended the expert group meeting:

Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples;

Albert Deterville, Chair of the Expert Mechanism on the Rights of Indigenous Peoples;

Francisco Cali-Tzay, President, Committee on the Elimination of Racial Discrimination;

Wilton Littlechild, Member of the Expert Mechanism on the Rights of Indigenous Peoples

4. The following experts participated in the expert group meeting:

Fleur Adcock, New Zealand

Mattias Ahren, Sweden

James Anaya, United States of America

Suhas Chakma, India

Gulvayra Kutsenko, Russian Federation

Elifurah Laltaika, United Republic of Tanzania

5. The expert group meeting was attended by observers from Member States, United Nations agencies, funds and programmes, other intergovernmental organizations, indigenous peoples' organizations and non-governmental organizations. The list of participants is contained in annex II.

B. Documentation

6. The participants had before them a programme of work and documents prepared by the participating experts. The documents for the expert group meeting are listed in annex III. The documentation is also available on the website of the secretariat of the Permanent Forum: <http://undesadspd.org/IndigenousPeoples/EGM2015OptionalProtocoltoUNDRIP.aspx>.

C. Opening of the meeting

7. The Director of the Division for Social Policy and Development of the Department of Economic and Social Affairs provided opening remarks and welcomed participants.

D. Election of officers

8. The Chair of the Permanent Forum, Dalee Sambo Dorough, was elected the Chair of the meeting, and Megan Davis, the expert member of the Permanent Forum, was elected Rapporteur.

E. Conclusions and recommendations

9. The conclusions and recommendations are contained in section V below.

III. Background

10. Since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples there has been a clear trajectory of discussion about the need for a mechanism to monitor its implementation. This was foreshadowed in article 42 of the Declaration, which states: "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the

provisions of this Declaration and follow up the effectiveness of this Declaration". In 2009, the Permanent Forum convened an expert group meeting to explore the possibility of a "new mandate" under article 42 to review States' implementation of the Declaration (see E/C.19/2009/2).

11. In 2011, the Permanent Forum appointed Dalee Sambo Dorrough and Megan Davis to undertake a study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, focusing on a potential voluntary mechanism to serve as a complaints body at the international level, in particular for claims and breaches of indigenous peoples' rights to lands, territories and resources at the domestic level (see E/C.19/2014/7). At its 46th plenary meeting, on 16 July 2014, the Economic and Social Council decided to authorize an international expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples".

12. The outcome document of the Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples (the Alta Declaration) (A/67/994, annex), held in Alta, Norway, in June 2013, and the Lima Declaration of the World Conference of Indigenous Women, held in Lima in October and November 2013, recommended a mechanism to review, monitor and report on the United Nations Declaration on the Rights of Indigenous Peoples. The proposals are reflected in paragraph 28 of the outcome document of the high-level plenary of the General Assembly known as the World Conference on Indigenous Peoples (resolution 69/2).

13. As the Forum study and the recommendation for the expert group meeting predate the World Conference on Indigenous Peoples, which was held in September 2014, for the purposes of the present report, the term "optional protocol" should be read interchangeably with "supervisory mechanism".

IV. Highlights of the discussion

14. Participants referred to articles 38 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples and paragraphs 20, 21, 28, 30 and 40 of the outcome document of the World Conference on Indigenous Peoples as empowering the creation of a supervisory mechanism or the revision of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples.

15. In paragraph 28 of the outcome document of the World Conference on Indigenous Peoples, the Human Rights Council was invited "to review the mandates of its existing mechanisms ... with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration". While there were competing interpretations of what the paragraph meant, the participants heard that any future discussion of a mechanism, in particular any revisions of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, must be joined with paragraph 28.

16. Participants agreed on the existence of an implementation gap with regard to the realization of the human rights affirmed by the United Nations Declaration on the Rights of Indigenous Peoples, although there was no consensus on the best way to address it. While some participants advocated a supervisory mechanism, others identified limitations of the supervisory mechanism approach based on the current

human rights treaty body system that counterintuitively can exacerbate the implementation gap. Participants heard that addressing the implementation gap was more complex than simply attributing its existence to a failure of the current system, particularly given the fact that many indigenous peoples have never utilized the current system because of resources, not because it is regarded as ineffective. On the other hand, some participants were of the view that, given the lack of State implementation of the Declaration, an instrument with binding obligations on States for indigenous peoples was necessary.

17. On the question of whether a declaration of the General Assembly can have an oversight mechanism, participants referred to examples of oversight mechanisms that have been created to monitor compliance with formally non-legally binding instruments, such as those affiliated with the Commission on the Status of Women, the Working Groups on Arbitrary Detention and on Enforced or Involuntary Disappearances, and the United Nations Forum on Forests. These mechanisms were comprehensively surveyed in the Permanent Forum study conducted by Megan Davis and Dalee Sambo Dorrough (E/C.19/2014/7).

18. The Office of the United Nations High Commissioner for Human Rights (OHCHR) treaty body strengthening process was raised as identifying serious challenges to the human rights treaty body system. These include, but are not limited to, the workload of experts, the quality of experts, the lack of resources and the lack of States' compliance with international obligations. Any proposal for a supervisory mechanism must be viewed against the backdrop of treaty body reform.

19. Some participants argued that what is needed in terms of institutional arrangements more than a new complaint procedure is a robust programme of awareness-raising on indigenous peoples and their rights that is aimed at government officials and the general public. In addition, it must be accompanied by a well-resourced programme of technical advisory services with the expertise to assist Governments and indigenous peoples on the development of regulatory reforms and remedies for rights violations, consultations over those reforms and other matters relevant to the effective realization of indigenous peoples' rights.

20. In further discussions on the potential limitations of any new or revised mechanism, participants heard about the concept of "rights ritualism". Rights ritualism means the "acceptance of institutionalized means for securing regulatory goals, while losing all focus on achieving the goals or outcomes themselves".¹ Rights ritualism can act as a mask to conceal Member States' resistance to norms. This means that Member States accede to treaties and optional protocols, yet, beyond signing, demonstrate very little commitment to implementing obligations. A recent empirical study undertaken by Hilary Charlesworth examined rights ritualism and the universal periodic review of the Human Rights Council.² Participants heard how any future mechanism must take the risks and advantages of ritualism into account and innovate in a way so as to avoid the limitations of the conventional oversight mechanism.

¹ John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham, United Kingdom of Great Britain and Northern Ireland, Edward Elgar, 2007).

² Hilary Charlesworth and Emma Larking, eds., *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge, Cambridge University Press, 2015).

21. Other challenges referred to included the lack of resources of indigenous peoples to utilize such a body. Participants heard how setting up a new mechanism will not address the implementation gap if the mechanism is voluntary or optional or if indigenous peoples do not have the resources to access it. The features of any supervisory body to the United Nations Declaration on the Rights of Indigenous Peoples must be carefully considered in a way that bridges, rather than reinforces, the implementation gap.

22. In discussing the implementation gap, participants highlighted the existence of other mechanisms that indigenous peoples can utilize, including the Human Rights Council's universal periodic review and other United Nations treaty bodies and regional mechanisms. It was evident that there is not a clear picture of what supervisory bodies, such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, are doing on indigenous rights. Although some indigenous groups, predominantly from high-income countries, have utilized these mechanisms, many indigenous peoples have not accessed them, nor do they have the resources to do so. Therefore, it cannot be said conclusively that these mechanisms are ineffective. It was agreed that further study is required.

23. Participants heard that a newly created supervisory body or revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples could experience similarly low rates of State conformity and ritualized State engagement as the treaty body system. If there is no review of what the current system does wrong, then the creation of a new mechanism or revision of the mandate of the Expert Mechanism may not be any different to what exists now.

24. Many participants raised the possibility of duplication in the treaty bodies and within the three indigenous mechanisms. It was discussed that duplication is not necessarily problematic and in fact has its benefits; it means the issue is being dealt with in multiple ways. Others saw duplication as challenging if there is not a clear demarcation of existing international bodies. An example drawn of where duplication may arise was the work of the previous Special Rapporteur on the rights of indigenous peoples, who has written extensively on the character of self-determination and free, prior and informed consent. The question was raised about whether any new or modified existing mechanism may provide interpretations that are conflicting or contradictory and how that could be reconciled.

25. The participants were not prescriptive about what form or what features a supervisory body or revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples should take. Some participants said that a revised mandate of the Expert Mechanism would not make it an oversight mechanism and others advocated for it to adopt features of a conventional oversight mechanism. The consensus was on the need for further discussion and assessment of the existing human rights regime in the context of indigenous peoples.

V. Conclusions and recommendations

A. Conclusions

Theme 1: Is a supervisory mechanism required in relation to the United Nations Declaration on the Rights of Indigenous Peoples? Is there an implementation gap?

Approaches to creating a supervisory mechanism

26. The conventional approach to addressing an implementation gap is to create a supervisory mechanism. A supervisory mechanism is traditionally empowered by way of an ancillary agreement called an "optional protocol". As explored in the Permanent Forum study, there is very little literature on the necessary technical aspects of optional protocols and no literature that says that a United Nations declaration cannot have a supervisory mechanism.

27. Alternatively, the outcome document of the World Conference on Indigenous Peoples, in paragraph 28, envisaged the Human Rights Council reviewing and modifying the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to assist Member States in monitoring, evaluating and achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples.

Implementation gap

28. The exigency of a more formalized approach to monitoring States' implementation of the United Nations Declaration on the Rights of Indigenous Peoples emerged out of concern about an "implementation gap" in regard to the Declaration. The term "implementation gap" was coined by the first Special Rapporteur on the rights of indigenous peoples, Rodolfo Stavenhagen, in a 2007 report highlighting the existence of an "implementation gap" between national and international recognition of indigenous peoples' rights and State policies and programmes affecting indigenous peoples, which commonly fail to take account of or contravene indigenous rights (A/HRC/6/15, para. 9). Subsequent reports of the second Special Rapporteur, James Anaya, reinforce this notion.

29. Some participants pointed out that the existence of an implementation gap means existing mechanisms are insufficient for implementation of the United Nations Declaration on the Rights of Indigenous Peoples. On the other hand, participants also heard that they do not have a full or clear picture because most indigenous representatives do not have the resources or education to utilize such mechanisms. Participants heard that it is important, before moving ahead to create a new supervisory mechanism, to take stock, evaluate or audit what existing mechanisms are doing and what they have done. An exhaustive analysis is required, as there is a lack of analysis of what they do.

30. A supervisory mechanism is not the only way for the United Nations system and other actors to improve the implementation of the Declaration. Awareness-raising and technical advice are equally important approaches to compelling better implementation of international norms. The participants heard that, with respect to human rights, the international legal system does not work by command. Rather, States' compliance with human rights standards tends to arise from multidimensional processes of norm internalization, validation and application that

engage local actors.³ The local internalization of a norm occurs not only because a gap or a wrong is identified, but because at the local level there is awareness of the norm, an acceptance of its legitimacy and the existence of conditions conducive for implementation.

31. Participants heard how they are at only the beginning stages of acceptance of the standards enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Acceptance is not yet that deep within Governments, especially officials at the national and local level, or within broader societies at the national level. Based on his work over the two terms of his mandate, the previous Special Rapporteur on the rights of indigenous peoples identified awareness-raising as being critical to the acceptance of indigenous norms among government actors, the United Nations system, indigenous peoples themselves and, more generally, society. He observed throughout his work a lack of knowledge and understanding about the Declaration, the values that it represents or the deep-seated issues confronting the indigenous peoples that it addresses.

32. Awareness-raising and technical assistance to Governments are therefore two other approaches, although these are not mutually exclusive. The work of the Special Rapporteur on the rights of indigenous peoples indicates that the promotion of good practices and providing technical assistance has had a positive effect, with many of the recommendations being taken up in legal and policy reforms made at the international and national levels. Further attention should be given to providing technical assistance directly to indigenous peoples themselves, including in order to strengthen their negotiation capacity and their ability to carry out their own initiatives in promotion of their rights. Participants heard that national human rights institutions have an important role to play in this regard.

Theme 2: What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage “rights ritualism”?

Limitations of the current human rights monitoring system

33. The participants undertook to explore the limitations of the current international human rights monitoring system as an important and necessary step in creating any new mechanism. Discussions about creating a supervisory mechanism are taking place against a backdrop of treaty body reform in the United Nations. In particular, specific reference was made to the OHCHR treaty body strengthening process, which has identified challenges in the international human rights treaty body system, including but not limited to the high workload of experts, the quality of experts, the lack of resources for both committees in their work and for many Member States in compliance. The current international human rights law system faces a number of key limitations in regard to the monitoring of rights that a new mechanism is in danger of replicating and must seek to avoid.

34. One of the limitations of the current system is the “carrot and stick” approach to monitoring that involves naming and shaming, manifest in periodic reporting procedures of United Nations treaty bodies, but will not on its own achieve norm internalization.

³ See, for example, Harold Hongju Koh, “Why do nations obey international law?”, *Yale Law Journal*, vol. 106, No. 8 (1997).

35. "Shaming" is the primary regulatory approach engaged by much of the United Nations system. Shaming is reliant on the State being made aware in private or in public that it is non-compliant with international human rights norms and that this non-compliance is not accepted. Participants heard how shaming is at the weak end of the stick approach; the stronger end is deployment of economic and military coercion, but these stronger forms are generally not available in the international human rights system.

36. Participants heard how shaming is to some extent effective, but it is fleeting and only touches the surface of government behaviour and action. An example of this is how officials in foreign ministries working at the international level may be more or less familiar with standards contained in the United Nations Declaration on the Rights of Indigenous Peoples with respect to rights to lands and resources, but officials in the national lands offices, where the substance of land laws are implemented, do not. There is thus often a disconnect between States' representations at the international level and the application of law and policy on the ground.

37. Following on this, participants heard how capacity-building can help States meet their obligations. Capacity-building is distinct from shaming in that it is proactive rather than reactive. Participants heard how the United Nations system is increasingly adopting a more constructive and collaborative approach to implementation of international human rights standards. Capacity-building is an approach supported by the previous Special Rapporteur on the rights of indigenous peoples as moving beyond reacting to denouncements of alleged human rights violations to helping to assist indigenous and States to develop concrete proposals and programmes of action for advancing the rights of indigenous peoples, which was supported in the expert group meeting by the Special Rapporteur.

38. Other limitations of the current system as identified by some participants included the limitations of adjudicative bodies at the international level. For example, the effectiveness of the complaint mechanism associated with treaties of the International Labour Organization, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169), is limited because of the low level of ratifications of that instrument. There is a concern that any optional protocol designed to monitor the Declaration would similarly have few ratifications. If so, an optional protocol would not effectively address the implementation gap for those indigenous peoples whose States do not ratify, nor would a revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples that was voluntary.

39. Another shortcoming of the international human rights monitoring system is that compliance with international decisions, even with binding decisions, is low. If looking to the regional adjudicative mechanisms within the inter-American and African human rights systems, there are routinely decisions finding violations of the rights of indigenous peoples, but State compliance with and implementation of these decisions is low and delays are common. Participants heard that implementation of decisions are often a result of political decisions and internal dynamics. The question remains: how do you foster internalization of norms, legitimacy and acceptance in order to achieve compliance with international standards and close the implementation gap?

40. Participants expressed that one of the main failings of the existing mechanisms is that they have not sufficiently engaged in analysis of the right to self-determination. While the Special Rapporteur has specifically provided authoritative

guidance on the right to self-determination, treaty bodies have had little engagement on this issue. The question was asked, what will it take for other mechanisms to analyse the indigenous right to self-determination?

Rights ritualism

41. As noted in the highlights for discussion, rights ritualism was presented as a useful lens through which to understand the limitations of the international human rights treaty body system. Rights ritualism is the acceptance of institutionalized means for securing regulatory goals, while losing all focus on achieving the goals or outcomes themselves.

42. Rights ritualism does not automatically negate the need for a supervisory mechanism. Participants heard ways in which rights ritualism can be avoided by remaining alert and inspecting beneath the surface of States' formal indigenous rights practices. Suggestions for a supervisory mechanism that can avoid the pitfalls of ritualism include the following: (a) prioritize institutionalized follow-up of implementation of the body's recommendations; (b) carefully select experts with sufficient expertise and capacity to sit on the body who are familiar with the work of other international and regional bodies' commentary on the United Nations Declaration on the Rights of Indigenous Peoples and who will advance strong articulations of the rights that it affirms; (c) provide for robust United Nations Secretariat and institutional support for the body; (d) ensure that the body's processes and working methods are streamlined and not overly burdensome; (e) carefully demarcate the role of the new body from the existing international bodies that also comment on States' conformity to the Declaration; and (f) ensure that the body devotes attention to building the strengths and capacities of States rather than solely focusing on what States do wrong.

43. The concept of a "learning culture", rather than a culture of blame, was promoted as being more effective. Encouraging States to continuously improve their compliance with rights of indigenous peoples is an important cooperative approach. Human rights bodies embracing such an approach would start by endeavouring to understand what a State is good at and would then build human rights commitment outwards through shared projects.

Theme 3: What are some of the problems with the implementation of the Declaration pertaining to lands, territories and resources?

44. The impetus for a monitoring mechanism for the United Nations Declaration on the Rights of Indigenous Peoples often comes from the problems of implementation pertaining to lands, territories and resources. Participants pointed out commitments made by States in the Declaration to establish at the national level, in conjunction with the indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources. This commitment is also reflected in paragraph 21 of the outcome document of the World Conference on Indigenous Peoples, which refers to the need to establish mechanisms to recognize and adjudicate indigenous peoples rights to lands. Yet States are not implementing this.

45. Participants heard about the challenges of the implementation of lands, territories and resources in specific contexts. One of the issues illuminated by this

discussion was that need for indigenous peoples to have improved knowledge about the international human rights system and access to financial resources to make use of this system. Participants again reiterated the need for awareness-raising and technical support as an alternative or a parallel to a complaint mechanism.

Theme 4: What are the lessons that can be learned from other mechanisms?

46. Participants heard about lessons from other mechanisms from the human rights treaty body system and regional bodies such as the African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights. The importance of regional bodies is referred to in paragraph 30 of the outcome document of the World Conference on Indigenous Peoples.

47. Participants welcomed the increasingly important role of national and regional human rights institutions in contributing to the achievement of the ends of the Declaration. They encouraged the private sector, civil society and academic institutions to take an active role in promoting and protecting the rights of indigenous peoples.

Theme 5: What would be the features of an oversight mechanism?

48. Discussions about the features of an oversight mechanism covered many diverse issues. Participants heard that the establishment of any new oversight mechanism requires clarity of purpose and scope of application. In particular it must avoid duplication of the work of the Special Rapporteur on the rights of indigenous peoples and United Nations treaty bodies. While duplication has its benefits in terms of reinforcement of norms, there must be a comprehensive factual analysis of existing mechanisms before there is a move forward with any new oversight mechanism.

49. Potential features of a supervisory body or revised Expert Mechanism on the Rights of Indigenous Peoples included but were not limited to consideration by the Mechanism of periodic reports by States with indigenous peoples; the issuance of concluding observations and general comments; the carrying out of fact-finding missions in connection with specific human rights situations or allegations; and receiving complaints regarding violation of rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. For each of these features there were differing views as to whether such features would be effective or appropriate.

Theme 6: Is there an existing United Nations mechanism that could be adapted to do the work of an oversight body?

50. Participants discussed the proposal for the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to be amended in accordance with paragraph 28 of the outcome document of the World Conference on Indigenous Peoples. Participants pointed out that the Human Rights Council will be discussing this provision and that there need to be proposals by indigenous peoples in this regard. There were other interpretations of paragraph 28 of the outcome document, with some participants noting that the paragraph refers to assisting Member States "to monitor, evaluate and improve the achievement of the ends of the Declaration", indicating a more cooperative approach over an adversarial monitoring mechanism.

51. Some participants suggested that the mandate of the Expert Mechanism on the Rights of Indigenous Peoples should be modified to allow it to receive information from indigenous peoples, as well as States, on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Suggestions were made regarding what functions the Expert Mechanism could undertake, including receiving communications from indigenous peoples and conveying conclusions through country-specific reports and general observations. Some participants suggested that any reporting procedure would be voluntary and that States should not be compelled to engage; there was no consensus on this.

52. Suggestions were made about how the other mandates could assist in monitoring the United Nations Declaration on the Rights of Indigenous Peoples. Participants heard that the mandate of the Permanent Forum does not necessarily restrict the Permanent Forum from issuing communiqués or statements on issues pertaining to the Declaration, including on specific cases, or from engaging in interactive dialogues with States regarding the implementation of the Declaration. However, this will require innovation in the Permanent Forum's working methods and decision-making processes.

53. The Expert Mechanism on the Rights of Indigenous Peoples, like the Permanent Forum, could also amend its agenda, subject to approval by the Human Rights Council, to include interactive dialogue with States on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in their respective countries. States that are supposed to voluntarily accept the jurisdiction of a complaint mechanism should be inclined to participate in such a dialogue.

B. Recommendations

States

Implementation gap

54. The participants expressed deep concern at the implementation gap of the United Nations Declaration on the Rights of Indigenous Peoples. Implementation of the standards of the Declaration requires compliance with those standards by the authorities whose responsibilities affect the lives of indigenous peoples. Ultimately, it is those authorities, working at the domestic level within their respective spheres of competency, whose compliant behaviour and action are required to compel better implementation. Needed reforms in administrative practices, policies and legislation can come about only through executive and legislative action taken at the domestic level; and where the exercise of judicial authority bears upon indigenous peoples' rights, the implementation of the Declaration requires judicial decision-making consistent with its terms.

United Nations system

Implementation gap

55. The Human Rights Council should conduct a comprehensive review of the current system in order to understand how indigenous peoples are utilizing existing United Nations treaty bodies and the universal periodic review and other regional mechanisms.

56. The Human Rights Council should conduct a further study on lands, territories and resources in order to discern why there is excessively weak implementation and what a mechanism could do to address these fundamental indigenous human rights.

Supervisory mechanism

57. The Human Rights Council, in its future deliberations on modifying the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, in accordance with paragraph 28 of the outcome document of the World Conference on Indigenous Peoples, shall take into account the report of this expert group meeting and the issues and concerns raised therein.

58. The Human Rights Council should ensure that any deliberations concerning a proposed optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, including any proposed revision of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, include the full, effective and equal participation of all indigenous peoples, in line with the Declaration.

Annex I

Agenda and programme of work

Date time	Item programme
Wednesday, 28 January 2015	
10-10.30 a.m.	Opening remarks by Daniela Bas, Director of the Division for Social Policy and Development, Department of Economic and Social Affairs
	Item 1 Election of Chair and Rapporteur
	Item 2 Adoption of agenda and organization of work
10.30 a.m.-1 p.m.	Opening presentations
	Megan Davis and Dalee Sambo Dorough
	Theme 1: Why is an optional protocol required for the United Nations Declaration on the Rights of Indigenous Peoples?
	(a) Is there an implementation gap?
	(b) What are the compelling reasons for the creation of a supervisory body for the United Nations Declaration?
	(c) Is there an implementation gap and is it more acute in some areas of the United Nations Declaration, namely, lands, territories and resources?
	Presentation
	James Anaya
	General discussion
3-6 p.m.	
3-4.30 p.m.	Theme 2: What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage “rights ritualism”?
	(a) Given the recent treaty body reform, how does the creation of another body address some of the concerns that States and human rights mechanisms have about the effectiveness of such bodies, the workload and issues of duplication?
	(b) Given the burgeoning literature on the failure of the “carrot and stick approach” to human rights implementation, including the concept of “rights ritualism”, how could this body be different?
	(c) What are the limitations of taking this approach?

Date time	Item programme
	Presentation
	Fleur Adcock
	General discussion
4.30-6 p.m.	Theme 3: What are some of the problems with the implementation of the United Nations Declaration pertaining to lands, territories and resources?
	What are the limitations of State-based mechanisms pertaining to lands, territories and resources?
	Presentation
	Gulia Kutsenko
	General discussion
Thursday, 29 January 2015	
10 a.m.-1 p.m.	
10-11 a.m.	Theme 4: What are the lessons that can be learned from other mechanisms?
	(a) How do regional mechanisms work? Are they effective? How are they different from United Nations mechanisms?
	(b) What lessons could be drawn from other optional protocol supervisory bodies?
	Presentation
	Suhas Chakma
	General discussion
11 a.m.-12 p.m.	Theme 5: What would be the features of an oversight mechanism? Who would be subject to review and what would the admissibility requirements be?
	(a) What types of models might be appropriate for the United Nations Declaration?
	(b) How would admissibility requirements work?
	(c) What are the benefits of a voluntary mechanism?
	(d) How are cases selected?
	(e) How should the body be constituted?
	(f) What should the working methods be?

<i>Date time</i>	<i>Item programme</i>
	<i>Presentation</i>
	Elifurah Laltaika
	General discussion
12-1 p.m.	Theme 6: Is there an existing United Nations body that could be adapted to do the work of an oversight body?
	<i>Presentation</i>
	Mattias Ahren
	General discussion
3-6 p.m.	Adoption of the conclusions and recommendations

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Dalee Sambo Dorough, Chair

Joan Carling

Megan Davis

Oliver Loode

Aisa Mukabenova

Invited experts

Fleur Adcock, New Zealand

Mattias Ahren, Sweden

James Anaya, United States of America

Suhas Chakma, India

Gulvayra Kutsenko, Russian Federation

Elifurah Laltaika, United Republic of Tanzania

Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples

Albert Deterville, Chair, Expert Mechanism on the Rights of Indigenous Peoples

Wilton Littlechild, Member, Expert Mechanism on the Rights of Indigenous Peoples

Francisco Cali Tzay, Chair, Committee on the Elimination of Racial Discrimination

United Nations system

Food and Agriculture Organization of the United Nations (FAO)

Office of the United Nations High Commissioner on Human Rights (OHCHR)

Pan American Health Organization (PAHO)

United Nations Development Programme (UNDP)

United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

Non-governmental organizations and academic institutions

American Indian Law Alliance

Assembly of First Nations

Cultural Survival

Chittagong Hill Tracts Foundation
Columbia University
Conservation International
Gáldu Resource Centre for the Rights of Indigenous Peoples
Grand Council of the Crees (Eeyou Istchee)
Indian Law Resource Center
Indigenous World Association
Canadian Friends Service Committee (Quakers)
International Indian Treaty Council
Keep Girls Safe Foundation
National Congress of Australia's First Peoples
National Indian Youth Council
NRK Sápmi
Ochapowace Cree Nation
Sami Parliament of Norway
Tribal Link Foundation
University of Toronto
University of Vienna

States

Argentina
Armenia
Bangladesh
Bolivia (Plurinational State of)
Brazil
Canada
Chile
Colombia
Ecuador
El Salvador
Finland
Greece
Iraq
Mexico

New Zealand

Philippines

Russian Federation

South Africa

Turkey

United States of America

Viet Nam

Intergovernmental organizations

European Union

Annex III

List of documents

Concept note

Programme of work for the Expert Group Meeting

Paper submitted by Fleur Adcock

Paper submitted by Mattias Ahren

Paper submitted by James Anaya

Paper submitted by Suhas Chakma

Paper submitted by Elifurah Laltaika

Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism (E/C.19/2014/7)

All the reports, including other documents submitted during the meeting, are available on the website of the secretariat of the Permanent Forum on Indigenous Issues: <http://undesadspd.org/IndigenousPeoples/EGM2015OptionalProtocoltoUNDRIP.aspx>.